

Executive Summary – Enforcement Matter – Case No. 47828
Alex Mendez dba Mendez Tire Shop 3
RN105107197
Docket No. 2013-1937-MSW-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MSW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Mendez Tire Shop 3, 2815 West Business Highway 83, Weslaco, Hidalgo County

Type of Operation:

Used tire wholesale facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: March 14, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$39,319

Amount Deferred for Expedited Settlement: \$7,863

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$901

Total Due to General Revenue: \$30,555

Payment Plan: 35 payments of \$873 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Unclassified

Site/RN - Unclassified

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Executive Summary – Enforcement Matter – Case No. 47828
Alex Mendez dba Mendez Tire Shop 3
RN105107197
Docket No. 2013-1937-MSW-E

Investigation Information

Complaint Date(s): July 17, 2013

Complaint Information: Alleged there was an enormous amount of tires on the Facility's property which was causing a problem with mosquitos.

Date(s) of Investigation: August 8, 2013

Date(s) of NOE(s): October 4, 2013

Violation Information

1. Failed to ensure that scrap tires or scrap tire pieces are transported to an authorized facility. Specifically, approximately 47,331 scrap tires (approximately 4,733 cubic yards) were transported and disposed of at the Facility, which is not an authorized scrap tire disposal facility [30 TEX. ADMIN. CODE §§ 328.57(c)(3) and 330.15(a)].
2. Failed to sort, mark, classify, and arrange good used tires in an organized manner for sale to consumers [30 TEX. ADMIN. CODE § 328.56(d)(3)].
3. Failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed or lockable containers [30 TEX. ADMIN. CODE § 328.56(a)(1) and (d)(2)].
4. Failed to submit an annual report regarding transport of scrap tires to the Executive Director each calendar year [30 TEX. ADMIN. CODE § 328.57(e)].
5. Failed to retain all manifests showing the collection and disposition of all used or scrap tires and tire pieces and maintain the originals of manifests, work orders, invoices or other documentation used to support activities related to the accumulation, handling, and shipment of used or scrap tires. Specifically, no manifests were observed at the time of the investigation [30 TEX. ADMIN. CODE §§ 328.57(d) and 328.58(f)].
6. Failed to monitor tires stored outside for vectors and utilize appropriate vector control at the Facility at least once every two weeks [30 TEX. ADMIN. CODE § 328.56(d)(4)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

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Docket No. 2013-1937-MSW-E

Technical Requirements:

The Order will require the Respondent to:

- a. Immediately, cease accepting any additional scrap tires at the Facility until such time as the proper authorization is obtained.
- b. Within 30 days:
 - i. Obtain a scrap tire site registration for storage and processing of scrap tires or remove all scrap tires from the Facility and dispose of them at an authorized facility;
 - ii. Sort, mark, classify and arrange all good used tires in an organized manner for sale to the consumer;
 - iii. Begin submitting annual reports regarding transport of scrap tires to the Executive Director each calendar year;
 - iv. Begin retaining all manifests showing the collection and disposition of all used or scrap tires and begin maintaining records of manifests, work orders, and invoices pertaining to tire transportation; and
 - v. Develop and implement vector monitoring procedures and utilization of vector control measures for tires stored outside at the Facility.
- c. Within 45 days, submit written certification to demonstrate compliance with Ordering Provisions a. and b.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Mike Pace, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5933; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456
TCEQ SEP Coordinator: N/A
Respondent: Alex Mendez, Owner, Mendez Tire Shop 3, 2815 West Business Highway 83, Weslaco, Texas 78596
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	4-Oct-2013	Screening	7-Oct-2013	EPA Due	
	PCW	8-Oct-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	Alex Mendez dba Mendez Tire Shop 3				
Reg. Ent. Ref. No.	RN105107197				
Facility/Site Region	15-Harlingen	Major/Minor Source	Major		

CASE INFORMATION

Enf./Case ID No.	47828	No. of Violations	6
Docket No.	2013-1937-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Mike Pace
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$39,250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$9,384
Approx. Cost of Compliance \$247,905
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$39,250
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.2%	Adjustment	\$69
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 4.

Final Penalty Amount	\$39,319
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$39,319
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DEFERRAL	20.0% Reduction	Adjustment	-\$7,863
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$31,456
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Screening Date 7-Oct-2013

Docket No. 2013-1937-MSW-E

PCW

Respondent Alex Mendez dba Mendez Tire Shop 3

Policy Revision 3 (September 2011)

Case ID No. 47828

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105107197

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 7-Oct-2013

Docket No. 2013-1937-MSW-E

PCW

Respondent Alex Mendez dba Mendez Tire Shop 3

Policy Revision 3 (September 2011)

Case ID No. 47828

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105107197

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 328.57(c)(3) and 330.15(a)

Violation Description

Failed to ensure that scrap tires or scrap tire pieces are transported to an authorized facility. Specifically, approximately 47,331 scrap tires (approximately 4,733 cubic yards) were transported and disposed of at the Facility, which is not an authorized scrap tire disposal facility.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 2

60 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$15,000

Two monthly events are recommended from the August 8, 2013 investigation date to the October 7, 2013 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Extraordinary

Before NOV NOV to EDPRP/Settlement Offer

Ordinary

N/A

x

(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8,850

Violation Final Penalty Total \$15,026

This violation Final Assessed Penalty (adjusted for limits) \$15,026

Economic Benefit Worksheet

Respondent Alex Mendez dba Mendez Tire Shop 3
Case ID No. 47828
Reg. Ent. Reference No. RN105107197
Media Municipal Solid Waste
Violation No. 1

Percent Interest 5.0
Years of Depreciation 15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$236,655	8-Aug-2013	8-May-2014	0.75	\$8,850	n/a	\$8,850
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove approximately 47,331 scrap tires from the Facility and dispose of them at an authorized scrap tire disposal facility. The date required is the investigation date, and the final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$236,655

TOTAL

\$8,850

Screening Date 7-Oct-2013

Docket No. 2013-1937-MSW-E

PCW

Respondent Alex Mendez dba Mendez Tire Shop 3

Policy Revision 3 (September 2011)

Case ID No. 47828

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105107197

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 328.56(d)(3)

Violation Description

Failed to sort, mark, classify, and arrange good used tires in an organized manner for sale to consumers.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 2

60 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

Two monthly events are recommended from the August 8, 2013 investigation date to the October 7, 2013 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$19

Violation Final Penalty Total \$7,513

This violation Final Assessed Penalty (adjusted for limits) \$7,513

Economic Benefit Worksheet

Respondent Alex Mendez dba Mendez Tire Shop 3

Case ID No. 47828

Reg. Ent. Reference No. RN105107197

Media Municipal Solid Waste

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	8-Aug-2013	8-May-2014	0.75	\$19	n/a	\$19

Notes for DELAYED costs

Estimated cost to sort, mark, classify, and arrange good used tires for sale to consumers. The date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$19

Screening Date 7-Oct-2013

Docket No. 2013-1937-MSW-E

PCW

Respondent Alex Mendez dba Mendez Tire Shop 3

Policy Revision 3 (September 2011)

Case ID No. 47828

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105107197

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 328.56(a)(1) and (d)(2)

Violation Description

Failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed or lockable containers.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 2

60 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$7,500

Two monthly events are recommended from the August 8, 2013 investigation date to the October 7, 2013 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$333

Violation Final Penalty Total \$7,513

This violation Final Assessed Penalty (adjusted for limits) \$7,513

Economic Benefit Worksheet

Respondent Alex Mendez dba Mendez Tire Shop 3
Case ID No. 47828
Reg. Ent. Reference No. RN105107197
Media Municipal Solid Waste
Violation No. 3

Percent Interest 5.0
Years of Depreciation 15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$10,000	8-Aug-2013	8-Apr-2014	0.67	\$333	n/a	\$333
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a scrap tire storage site registration for the Facility. The date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$333

Screening Date 7-Oct-2013

Docket No. 2013-1937-MSW-E

PCW

Respondent Alex Mendez dba Mendez Tire Shop 3

Policy Revision 3 (September 2011)

Case ID No. 47828

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105107197

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 328.57(e)

Violation Description

Failed to submit an annual report regarding transport of scrap tires to the Executive Director each calendar year.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

60 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$3,750

One annual event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$160

Violation Final Penalty Total \$3,757

This violation Final Assessed Penalty (adjusted for limits) \$3,757

Economic Benefit Worksheet

Respondent Alex Mendez dba Mendez Tire Shop 3

Case ID No. 47828

Reg. Ent. Reference No. RN105107197

Media Municipal Solid Waste

Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$65	1-Mar-2013	8-Aug-2013	1.36	\$4	\$65	\$69
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost to submit an annual report regarding the transport of scrap tires. The date required is the date the report was due and the final date is the investigation date.

Approx. Cost of Compliance

\$65

TOTAL

\$69

Screening Date 7-Oct-2013

Docket No. 2013-1937-MSW-E

PCW

Respondent Alex Mendez dba Mendez Tire Shop 3

Policy Revision 3 (September 2011)

Case ID No. 47828

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105107197

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code §§ 328.57(d) and 328.58(f)

Violation Description

Failed to retain all manifests showing the collection and disposition of all used or scrap tires and tire pieces and maintain the originals of manifests, work orders, invoices or other documentation used to support activities related to the accumulation, handling, and shipment of used or scrap tires. Specifically, no manifests were observed at the time of the investigation.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

60 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
Single event	x

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$3,757

This violation Final Assessed Penalty (adjusted for limits) \$3,757

Economic Benefit Worksheet

Respondent Alex Mendez dba Mendez Tire Shop 3
Case ID No. 47828
Reg. Ent. Reference No. RN105107197
Media Municipal Solid Waste
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$100	8-Aug-2013	8-Apr-2014	0.67	\$3	n/a	\$3
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to retain all manifests showing the collection and disposition of all used or scrap tires and begin maintaining records of manifests, work orders, and invoices pertaining to tire transportation. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$3

Screening Date 7-Oct-2013

Docket No. 2013-1937-MSW-E

PCW

Respondent Alex Mendez dba Mendez Tire Shop 3

Policy Revision 3 (September 2011)

Case ID No. 47828

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105107197

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 328.56(d)(4)

Violation Description Failed to monitor tires stored outside for vectors and utilize appropriate vector control at the Facility at least once every two weeks.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			x

Percent 7.0%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,250

\$1,750

Violation Events

Number of Violation Events 1

60 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,750

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$19

Violation Final Penalty Total \$1,753

This violation Final Assessed Penalty (adjusted for limits) \$1,753

Economic Benefit Worksheet

Respondent Alex Mendez dba Mendez Tire Shop 3

Case ID No. 47828

Reg. Ent. Reference No. RN105107197

Media Municipal Solid Waste

Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	8-Aug-2013	8-May-2014	0.75	\$19	n/a	\$19

Notes for DELAYED costs

Estimated cost to develop and implement vector monitoring procedures and utilization of vector control measures for tires stored outside at the Facility. The date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$19

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

PENDING Compliance History Report for CN604386698, RN105107197, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN604386698, Alex Mendez

Classification: UNCLASSIFIED

Rating: ---

Regulated Entity: RN105107197, Mendez Tire Shop 3

Classification: UNCLASSIFIED

Rating: ---

Complexity Points: 1

Repeat Violator: NO

CH Group: 14 - Other

Location: 2815 W BUSINESS HWY 83 WESLACO, TX 78596-9395, HIDALGO COUNTY

TCEQ Region: REGION 15 - HARLINGEN

ID Number(s): TIRES REGISTRATION 6026482

Compliance History Period: September 01, 2008 to August 31, 2013

Rating Year: 2013

Rating Date: 09/01/2013

Date Compliance History Report Prepared: October 10, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: October 10, 2008 to October 10, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Mike Pace

Phone: (817) 588-5933

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ALEX MENDEZ DBA
MENDEZ TIRE SHOP 3
RN105107197**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2013-1937-MSW-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Alex Mendez dba Mendez Tire Shop 3 ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a used tire wholesale facility at 2815 West Business Highway 83 in Weslaco, Hidalgo County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 9, 2013.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Thirty-Nine Thousand Three Hundred Nineteen Dollars (\$39,319) is assessed by the Commission in settlement of the violations

alleged in Section II ("Allegations"). The Respondent has paid Nine Hundred One Dollars (\$901) of the administrative penalty and Seven Thousand Eight Hundred Sixty-Three Dollars (\$7,863) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Thirty Thousand Five Hundred Fifty-Five Dollars (\$30,555) of the administrative penalty shall be payable in 35 monthly payments of Eight Hundred Seventy-Three Dollars (\$873) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to ensure that scrap tires or scrap tire pieces are transported to an authorized facility, in violation of 30 TEX. ADMIN. CODE §§ 328.57(c)(3) and 330.15(a), as documented during an investigation conducted on August 8, 2013. Specifically, approximately 47,331 scrap tires (approximately 4,733 cubic yards) were transported and disposed of at the Facility, which is not an authorized scrap tire disposal facility.

2. Failed to sort, mark, classify, and arrange good used tires in an organized manner for sale to consumers, in violation of 30 TEX. ADMIN. CODE § 328.56(d)(3), as documented during an investigation conducted on August 8, 2013.
3. Failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed or lockable containers, in violation of 30 TEX. ADMIN. CODE § 328.56(a)(1) and (d)(2), as documented during an investigation conducted on August 8, 2013.
4. Failed to submit an annual report regarding transport of scrap tires to the Executive Director each calendar year, in violation of 30 TEX. ADMIN. CODE § 328.57(e), as documented during an investigation conducted on August 8, 2013.
5. Failed to retain all manifests showing the collection and disposition of all used or scrap tires and tire pieces and maintain the originals of manifests, work orders, invoices or other documentation used to support activities related to the accumulation, handling, and shipment of used or scrap tires, in violation of 30 TEX. ADMIN. CODE §§ 328.57(d) and 328.58(f), as documented during an investigation conducted on August 8, 2013. Specifically, no manifests were observed at the time of the investigation.
6. Failed to monitor tires stored outside for vectors and utilize appropriate vector control at the Facility at least once every two weeks, in violation of 30 TEX. ADMIN. CODE § 328.56(d)(4), as documented during an investigation conducted on August 8, 2013.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Alex Mendez dba Mendez Tire Shop 3, Docket No. 2013-1937-MSW-E " to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Agreed Order, cease accepting any additional scrap tires at the Facility until such time as the proper authorization is obtained.
- b. Within 30 days after the effective date of this Agreed Order:
 - i. Obtain a scrap tire site registration for storage and processing of scrap tires or remove all scrap tires from the Facility and dispose of them at an authorized facility;
 - ii. Sort, mark, classify and arrange all good used tires in an organized manner for sale to the consumer, in accordance with 30 TEX. ADMIN. CODE § 328.56(d)(3);
 - iii. Begin submitting annual reports regarding transport of scrap tires to the Executive Director each calendar year, in accordance with 30 TEX. ADMIN. CODE § 328.57(e);
 - iv. Begin retaining all manifests showing the collection and disposition of all used or scrap tires and begin maintaining records of manifests, work orders, and invoices pertaining to tire transportation, in accordance with 30 TEX. ADMIN. CODE §§ 328.57(d) and 328.58(f); and
 - v. Develop and implement vector monitoring procedures and utilization of vector control measures for tires stored outside at the Facility, in accordance with 30 TEX. ADMIN. CODE § 328.56(d)(4).
- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Ramona Sanchez
For the Executive Director

4/7/15
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Alex Mendez
Signature

2-18-2014
Date

Alex Mendez
Name (Printed or typed)
Authorized Representative of
Alex Mendez dba Mendez Tire Shop 3

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.